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VIA ECF & REGULAR MAIL

September 30, 2023

Hon. P. Kevin Castel
United States District Judge
U.S. District Court, Southern District of New York
500 Pearl Street, Courtroom 110
New York, New York 10007

Re: ***Jane Doe v. Yeshiva University, et al.***
Case No. 1:22-cv-05405-PKC-KHP
Ninth Circuit *En Banc* Panel Reverses Title IX Dismissal in *Brown v. Arizona*

Dear Judge Castel:

I write to notify the Court that an *en banc* panel of the Ninth Circuit Court of Appeals, in *Brown v. Arizona*, 2023 U.S. App. LEXIS 25276, *31-43 (9th Cir. September 25, 2023) (*en banc*), has reversed the decision of its earlier three-judge panel (*Arizona v. Brown*, 23 F.4th 1173 (9th Cir. 2022)) and reversed the Arizona District Court's decision which granted the University of Arizona's summary judgment motion which dismissed a plaintiff-student's Title IX claim that was predicated on an off-campus rape committed by a fellow student-athlete. For the Court's convenience, I hereby enclose a copy of this recent decision.

The *Brown* Court held that, even though plaintiff alleged that she was raped in an off-campus house, a genuine material issue of fact existed as to whether the university had substantial control of both the alleged rapist *and substantial control of the context in which the accused rapist assaulted plaintiff*. *Id.* at *41-42 (emphasizing, *inter alia*, that university's student Code of Conduct and specific university rules pertaining to student-athletes—which, as here, provided that the university maintained heightened disciplinary authority over student-athletes for acts that occurred off-campus, as well as on-campus—provided the requisite Title IX connection between the school and the assault).

This precise issue—and the meaning and impact of *Brown*—has been front and center in the Title IX dispute now before this Court: *see* Yeshiva University Defendants' Memorandum of Law, dated October 17, 2022 (Doc. No. 43) at 15-16; Plaintiff's Memorandum of Law, dated October 17, 2022 (Doc. No. 60) at 16-24; Yeshiva University Defendants' Reply Memorandum of Law, dated December 6, 2022 (Doc. No. 68) at 4-5; Plaintiff's Sur-Reply Memorandum of Law, dated December 30, 2022 (Doc. No. 88) at 1-2.

Thank you for your consideration of this issue.

Very best regards,

Kevin T. Mulhearn /S

KEVIN THOMAS MULHEARN

KTM/mmi/encl.

CC: Danielle C. Lesser, Esq.
Howard Elman, Esq.
David L. Barres, Esq.